United Nations CERD/C/USA/Q/7-9

International Convention on the Elimination of All Forms of Racial Discrimination

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Item 4 of the provisional agenda
Consideration of reports, comments and information submitted by States parties under article 9 of the Convention

List of themes in relation to the combined seventh to ninth periodic reports of United States of America (CERD/C/USA/7-9)

Note by the Country Rapporteur

The Committee on the Elimination of Racial Discrimination decided at its seventy-sixth session (A/65/18, para. 85) that the Country Rapporteur would send to the State party concerned a short list of themes with a view to guiding and focusing the dialogue between the State party's delegation and the Committee during the consideration of the State party's report. This document contains a list of such themes. This is not an exhaustive list; other issues may also be raised in the course of the dialogue. No written replies are required.

1. The Convention in domestic law, institutional and policy framework for its implementation (arts. 1, 2 and 4)

(a) Progress made to bring federal and State legislation in line with the definition of racial discrimination as set out in article 1 of the Convention, including: (i) prohibition of indirect racial discrimination in all fields of life (CERD/C/USA/CO/6, paras. 10 and 35); and (ii) prohibition of racial discrimination in all its forms committed by private individuals, groups or organizations (ibid., para. 11).

(b) Additional information on court cases finding violations of the disparate impact doctrine, including but not limited to the fields of employment, housing and voting procedures (CERD/C/USA/7-9, para. 8).

(c) Progress made to establish a national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (CERD/C/USA/CO/6, para. 12; CERD/C/USA/7-9, para. 31).

(d) Update on the adoption of special measures to address racial disparities in the enjoyment of human rights and their impact, including the implications of the Supreme Court decision in *Schuette v. Coalition to Defend Affirmative Action* (CERD/C/USA/CO/6, para. 15; CERD/C/USA/7-9, para. 16).

(e) Reservation to article 4 of the Convention in the light of the Committee's general recommendation No. 35 (2013) on combating racist hate speech, and the effectiveness of the State party's efforts to combat racist hate speech (CERD/C/USA/CO/6, para. 18).

(f) Additional information on practical measures taken to ensure effective coordination and compliance with the State party's obligations under the Convention within its territory at federal, State and local levels, and outside its territory but under its jurisdiction (CERD/C/USA/CO/6, para. 13; CERD/C/USA/7-9, para. 32).

2. Discrimination against national or ethnic minorities (arts. 2–7)

(a) Racial disparities at different stages of the criminal justice system, including overrepresentation of individuals belonging to racial and ethnic minorities, in particular African Americans, among persons who are arrested, charged, convicted, incarcerated and sentenced to death (CERD/C/USA/CO/6, para. 20; CERD/C/USA/7-9, para. 65).

(b) Racial and ethnic disparities in education, poverty, housing, health and exposure to crime and violence (CERD/C/USA/CO/6, paras. 16, 17 and 32–34); disparate impact of gun violence on minorities and the discriminate effect of the "Stand Your Ground" laws.

(c) Criminalization of homelessness and its disproportionate impact on individuals belonging to national or ethnic minorities.

(d) Progress made, in law and in practice, to end the practice of racial profiling and surveillance by law enforcement officials (CERD/C/USA/CO/6, para. 14; CERD/C/USA/7-9, para. 82).

(e) Obstacles to voting imposed on individuals belonging to national or ethnic minorities, including voter identification laws, district gerrymandering and disenfranchisement of convicted felons.

(f) Racial disparities in the aftermath of natural disasters (CERD/C/USA/CO/6, para. 31; CERD/C/USA/7-9, paras. 129–132).

(g) Excessive use of force by law enforcement officials, including the deadly use of tasers and the use of lethal force by Customs and Border Protection officers at the United States–Mexico border, and the disparate impact on persons belonging to racial, ethnic or national minorities (CERD/C/USA/CO/6, para. 25).

3. Discrimination against indigenous peoples (arts. 2–7)

(a) Obstacles to the recognition of tribes.

(b) Additional information on economic activities near or on tribal lands and specific progress made, in law and in practice, to guarantee meaningful participation of indigenous peoples in policymaking and decisions which affect them (CERD/C/USA/CO/6, para. 19; CERD/C/USA/7-9, para. 180; CERD/C/USA/DEC/1); further information on justice mechanisms used to provide appropriate remedies for adverse economic activities by corporations and information on remedies provided to communities affected by the activities of corporations and how meaningful participation of indigenous communities in the determination of appropriate remedies is guaranteed (CERD/C/USA/CO/6, para. 30; CERD/C/USA/7-9, para. 177).

(c) Lack of jurisdiction and resources to investigate and prosecute crimes committed on reservations.

(d) Progress made to improve the situation of indigenous peoples, including poverty, unemployment, health-care gaps, violent crime, including violence against women, low levels of academic achievement and the lack of access to safe drinking water and basic sanitation (HRI/CORE/USA/2011, para. 205).

4. Situation of non-citizens, including migrants, refugees and asylum seekers (arts. 5 and 7)

(a) Prolonged detention and inadequate facilities and services for asylum seekers.

(b) Mandatory detention of immigrants for prolonged periods of time and obstacles to accessing State-sponsored legal aid, interpreters, health services, education and employment opportunities while in detention; deportation of undocumented immigrants.

(c) High levels of poverty and inadequate access to health care and education for migrant workers.

5. Access to justice (art. 6)

(a) Lack of the right to counsel for indigent persons belonging to racial, ethnic and national minorities in civil proceedings and inadequate or unavailable counsel for indigent persons belonging to racial, ethnic and national minorities in criminal proceedings (CERD/C/USA/CO/6, para. 22; CERD/C/USA/7-9, para. 62).

(b) Access to justice and recourse for victims of indirect discrimination (CERD/C/USA/CO/6, para. 35).

(c) Access to justice by foreign detainees held in Guantanamo Bay as "enemy combatants" (CERD/C/USA/CO/6, para. 24; CERD/C/USA/7-9, para. 77).

6. Training, education and other measures to combat prejudice and intolerance (art. 7)

(a) Adoption of a national strategy or a plan of action to fully implement the provisions of the Convention and to eliminate structural discrimination.

(b) Training programmes or courses provided to Government officials, the judiciary, federal and State law enforcement officials, teachers, social workers and other public officials to raise awareness about the Convention and its provisions (CERD/C/USA/CO/6, para. 36).

(c) Inclusion of the history and culture of different racial, ethnic and national groups in the State party, including indigenous groups, in the curricula and textbooks for primary and secondary schools (CERD/C/USA/CO/6, para. 38).